

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

FILED - CLERK
U.S. DISTRICT COURT

263 LDR 1C 7/18/03

TX EASTERN DISTRICT
BY 

PAUL ALLAN LARSON, §
Petitioner, §
§
V. § CIVIL ACTION NO. 9:03cv59
§ Magistrate Judge Harry W. McKee
JANIE COCKRELL, DIRECTOR, §
TEXAS DEPARTMENT OF CRIMINAL, §
JUSTICE, INSTITUTIONAL DIVISION, §
Respondent. §

**RESPONDENT COCKRELL'S ANSWER
WITH BRIEF IN SUPPORT**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Respondent, Janie Cockrell, Director ("the Director"), Texas Department of Criminal Justice, Institutional Division ("TDCJ-ID"), through her attorney, the Attorney General of Texas, and files this her Answer with Brief in Support.

I.

JURISDICTION

The court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 2241, 2254.

II.

DENIAL

The Director denies every allegation of fact made by Petitioner, Paul Allan Larson ("Larson"), except those supported by the record and those specifically admitted herein.

III.

STATEMENT OF THE CASE

The Director has lawful custody of Larson pursuant to a judgment and sentence of the 263rd District Court of Harris County, Texas, in cause number 465007. Exhibit A (TDCJ-ID Commitment inquiry printout with attached explanations). On May 11, 1987, Larson pleaded guilty to the felony

offense of aggravated sexual assault of a child, the court accepted his plea, found him guilty, and sentenced him sixty years imprisonment. *Id.*

A procedural history of any appeals or applications for state writ of habeas corpus is unnecessary for the disposition of the instant petition because the validity of Larson's holding conviction is not directly at issue; rather, he challenges a prison disciplinary hearing. Fed. Writ Pet., at 2, 7-8. In disciplinary case number 20030044031, Larson was found guilty of "failing to obey an order" and "causing a disruption of operations" by delaying the shake down of two dorms, a code 24 and 23 violation. Exhibit B¹ at 1, 7. On October 18, 2002, as a result of this disciplinary case, Larson's punishment was assessed thirty days commissary restriction, thirty days cell restriction, a line class reduction, and forfeiture of thirty days of good-time. Exhibit B at 1, 7.

On November 4, 2002, Larson filed a Step One Grievance appealing the disciplinary proceeding. Exhibit B at 8-10. On November 12, 2002, Larson's Step One Grievance was denied. Exhibit B at 11. Subsequently, on November 27, 2002, Larson filed a Step Two Grievance. Exhibit B at 12-13. On December 12, 2002, Larson's Step Two Grievance was denied. Exhibit B at 13. Larson filed this federal writ petition on March 3, 2003. Fed. Writ Pet., at 9.

IV.

STATE COURT RECORDS

Records of Larson's state court proceedings are irrelevant to the resolution of this case. Therefore, unless the court orders otherwise, the records will not be forwarded to this court. However, a TDCJ-ID commitment inquiry printout regarding Larson's holding conviction is attached as "Exhibit A." Records of the hearing and grievance proceedings including a business records affidavit regarding the disciplinary case Larson challenges are attached as "Exhibit B." A copy of Larson's hearing tape is available should this court require a copy.

¹ The records for disciplinary case number 20030044031 and a business records affidavit are attached as Exhibit B. For the convenience of the court, the Director has numbered the pages of Exhibit B. Records of Exhibit B also includes the grievance records.

V.

PETITIONER'S ALLEGATIONS

The Director understands Larson's allegations to be as follows:

1. No valid evidence was produced in both charges to support the findings of guilty.
2. He was denied witnesses.
3. In violation of TDCJ-ID policy, the hearing officer did not make a record as to why Larson's witnesses were denied and Larson was denied access to the hearing tape.

Fed. Writ Pet. at 7-8.

VI.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

The record indicates that Larson exhausted his available administrative remedies regarding this disciplinary case because he completed his Step One and Step Two Grievance proceedings. Exhibit B at 8-13. Because Larson challenges a disciplinary proceeding, he was not required to file a state application for writ of habeas corpus. *See Ex parte Brager*, 704 S.W.2d 46, 46 (Tex. Crim. App. 1986) ("[t]his Court will not entertain claims concerning alleged violations of prison disciplinary procedures.").

VII.

**RESPONDENT COCKRELL'S ANSWER
WITH BRIEF IN SUPPORT**

The evidence was sufficient.

Larson alleges that no valid evidence was introduced in both charges to support the findings of guilty. Fed. Writ Pet., at 7. As explained below this claims is without merit.

The Fifth Circuit has held that disciplinary determinations "will not be disturbed unless they are arbitrary and capricious." *Banuelos v. McFarland*, 41 F.3d 232, 234 (5th Cir. 1995). Due to the needs of prison security and protection, even "anonymous and *merely generalized accusations* [can] form the sole basis for disciplinary action against a prison inmate." *Smith v. Rabalais*, 659 F.2d 539,

545 (5th Cir. 1981), *cert. denied*, 455 U.S. 992, 102 S. Ct. 1619 (1982) (emphasis added). The court's role on review is only to "examine if the guilty finding has 'support of some facts' or 'any evidence at all.'" *Hudson v. Johnson*, 242 F.3d 534, 537 (5th Cir. 2001) (quoting *Gibbs v. King*, 779 F.2d 1040, 1044 (5th Cir. 1986)). Therefore, so long as there is "any evidence at all" to support the prison disciplinary hearing officer's findings, the results of the hearing will be upheld. *Hudson*, 242 F.3d at 536 (quoting *Smith v. Rabalais*, 659 F.2d 539, 545 (5th Cir. 1981), *cert. denied*, 455 U.S. 992, 102 S. Ct. 1619 (1982)). Here, the record reflects the charging officer ordered Larson to move his property to the gym for a shakedown which Larson refused. Exhibit B at 1, 2, 3, 7. The record reflects Larson's health summary classification contains a restriction of not lifting more than twenty pounds. Exhibit B at 5. However, "other inmates assist with the carrying of property or inmates make additional trips to carry property to the shakedown area." Exhibit B at 6. The evidence was more than sufficient to support the finding that Larson was guilty of "failing to obey an order," and that Larson was guilty of "disrupting operations" in that Larson's act resulted in a delay in shaking down two dorms. Exhibit B at 1, 2, 3, 6, 7. Therefore, these claims must fail.

Larson's allegation that he was denied witnesses is without merit.

This allegation is without merit because the record reflects Larson was informed of his right to call witnesses and present evidence. Exhibit B at 4. Further, the record reflects Larson did not request witnesses or present evidence. Exhibit B at 7. Instead, Larson offers his own self-serving statements and conclusory allegations that TDCJ-ID denied him his right to call witnesses. Finally, *Wolff* requires that an inmate be allowed to "call witnesses and present documentary evidence when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals." *Wolff v. McDonnell*, 418 U.S. 539, 566, 94 S. Ct. 2963, 2979 (1974). However, "the unrestricted right to call witnesses from the prison population carries obvious potential for disruption and for interference with the swift punishment that in individual cases may be essential to carrying out the correctional program of the institution." *Id.* at 566, 94 S. Ct. at 2980. "Prison officials must have the necessary discretion to keep the hearing within reasonable limits and to refuse to call witnesses

that may create a risk of reprisal or undermine authority, as well as limit access to other inmates to collect statements or to compile other documentary evidence.” *Id.* Therefore, this claim fails as a conclusory allegation.

Larson’s allegations that TDCJ-ID violated its policies because the hearing officer did not make a record regarding the absent witnesses and that Larson was not provided a copy of the hearing tape do not allege cognizable constitutional violations.

Larson’s allegations fail to assert federal constitutional rights. Habeas corpus review is available only for the vindication of rights existing under federal law; not rights existing solely under the rules of state procedure or, in this case, administrative procedure. *See Myers v. Klevenhagen*, 97 F.3d 91, 94 (5th Cir. 1996) (TDCJ-ID’s failure to follow its own administrative rules and regulations does not raise federal constitutional issues as long as minimum constitutional requirements are met); *see also Hernandez v. Estelle*, 788 F.2d 1154, 1158 (5th Cir. 1986), *rehrg. denied*, 793 F.2d 1287 (5th Cir. 1986) (failure of prison officials to follow their own rules does not establish a constitutional violation). Further, it is not a federal habeas corpus court’s function to review a state’s interpretation of its own law. *Weeks v. Scott*, 55 F.3d 1059, 1063 (5th Cir. 1995). Accordingly, Larson’s claims must fail.

Larson is not entitled to relief regarding the punishment he received.

As a result of disciplinary case number 20030044031, Larson received thirty days commissary restriction, thirty days cell restriction, a line class reduction, and forfeiture of thirty days of good-time. Exhibit B at 1, 7.

To the extent he challenges the imposition of commissary restrictions, cell restrictions, and the line class reduction, Larson has failed to demonstrate actionable constitutional deprivations. The Due Process Clause is not implicated by these changes in the conditions of Larson’s confinement; therefore, he has not stated claims that are entitled to federal habeas corpus relief.

“[T]he Due Process Clause does not protect every change in the conditions of confinement having a substantial adverse impact on the prisoner.” *Sandin v. Conner*, 515 U.S. 472, 478, 115 S. Ct. 2293, 2297 (1995). When a prisoner is lawfully incarcerated, he loses many of the rights and

privileges that most citizens enjoy. *Madison v. Parker*, 104 F.3d 765, 767 (5th Cir. 1997); *Sandin*, 515 U.S. at 485, 115 S. Ct. at 2301; *Wolff v. McDonnell*, 418 U.S. 539, 555, 94 S. Ct. 2963, 2974 (1974). However, prisoners do not lose all constitutional rights when they are incarcerated. *Id.* In certain circumstances, states may create liberty interests which are protected by the Due Process Clause. *Madison*, 104 F.3d at 767; *Sandin*, 515 U.S. at 483-84, 115 S. Ct. at 2300. “[T]hese interests will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, . . . , nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Sandin*, 515 U.S. at 484, 115 S. Ct. at 2300. “[T]hese interests are generally limited to state created regulations or statutes which affect the quantity of time rather than the quality of time served by a prisoner.” *Madison*, 104 F.3d at 767.

Larson’s temporary imposition of commissary restrictions and cell restrictions, do not pose an atypical or significant hardship beyond the ordinary incidents of prison life. Rather, these restrictions constitutes a change in the conditions of Larson’s confinement, and, therefore, do not implicate the protections afforded by the Due Process Clause. *See Id.* at 768 (thirty day commissary and cell restrictions do not implicate due process concerns); *see also Sandin*, 515 U.S. at 486, 115 S. Ct. at 2301 (holding that no liberty interest was implicated by placement in administrative segregation).

Further, to the extent Larson challenges the hearing officer’s determination that his line class status be reduced, Larson’s custodial classification in terms of a “line class” will not “inevitably affect the duration of his sentence.” *Sandin*, 515 U.S. at 487, 115 S. Ct. at 2302. The possibility that Larson’s custody classification would affect when he was ultimately released from prison “is simply too attenuated to invoke the procedural guarantees of the Due Process Clause.” *Sandin*, 515 U.S. at 487, 115 S. Ct. at 2302). Larson has not shown that the hearing officer’s determination that his custody classification be reduced “would automatically shorten his sentence or lead to his immediate release.” *Carson v. Johnson*, 112 F.3d 818, 821 (5th Cir. 1997). Moreover, the timing of Larson’s

release is “too speculative to afford him a constitutionally cognizable claim to the ‘right’ to a particular time earning status.” *Malchi v. Johnson*, 211 F.3d 953, 959 (5th Cir. 2000). Therefore, in regard to the imposition of commissary restrictions, cell restrictions, and line class status, Larson has not stated claims that are entitled to federal habeas corpus relief.

However, as a result of disciplinary case number 20030044031, Larson was deprived of 30 days of good-time. Exhibit B at 1, 7. Under Texas law, good-time credits do not actually reduce an inmate’s sentence. Rather, since 1977, good-time credits affect the amount of a given sentence that an eligible inmate will have to serve before being released on parole or mandatory supervision. *See* TEX. CIV. STAT., art. 6181-1, § 4 (Vernon Supp. 1977) (good time credits “appl[y] only to eligibility for parole or mandatory supervision”), *currently* TEX. GOV’T. CODE §498.003(a) (Vernon 1998). A Texas prisoner does not possess a liberty interest in being released on parole. *Allison v. Kyle*, 66 F.3d 71, 73-74 (5th Cir. 1995) (citations omitted). Thus, to the extent that Larson contends that his parole eligibility has been adversely affected by the challenged disciplinary infraction, he does not state a basis for relief. *Sandin*, 515 U.S. at 487, 115 S. Ct. at 2302.

Furthermore, the Supreme Court has held that states may, in some instances, create liberty interests that are protected by the Due Process Clause through the language of prison regulations. *Sandin*, 515 U.S. at 484, 115 S. Ct. at 2300. In those cases, the standards for satisfying due process are set out in *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S. Ct. 2963, 2975 (1974). The *Wolff* due process procedures must be examined regarding disciplinary case number 20020298647 because good-time credits were taken away from Larson, and he is eligible for mandatory supervision. *Malchi*, 211 F.3d at 958-9.

In general, prison disciplinary proceedings do not form part of a criminal prosecution, and, therefore, “the full panoply of rights due a defendant in such proceedings does not apply.” *Wolff*, 418 U.S. at 556, 94 S. Ct. at 2975. Due process requires that a prison inmate be provided with: (1) advanced written notice of the disciplinary charges, (2) an opportunity to call witnesses and present documentary evidence when the presentation is not unduly hazardous to institutional safety and

correctional goals, and (3) a written statement by the fact finder of the evidence relied upon and the reason for the disciplinary action. *Id.* at 563-67, 94 S. Ct. at 2978-80.

To the extent Larson claims that his due process rights were violated, his claims must fail. First, Larson was notified of the disciplinary charges on October 15, 2002, at 1:20 p.m., and the hearing occurred on October 18, 2002, at 10:40 a.m.. Exhibit B at 1. Second, Larson was informed of his right to call witnesses and present documentary evidence. Exhibit B at 4. Finally, Larson was provided with a final report of the disciplinary hearing stating the evidence relied upon and the reason for the disciplinary action. Exhibit B at 1.

Accordingly, the *Wolff* due process rights were satisfied. And the hearing officer exercised his discretion to “keep the hearing within reasonable limits.” *Wolff*, 418 U.S. at 566, 94 S. Ct. at 2980.

VIII.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, the Director respectfully requests that Larson’s petition for writ of habeas corpus be denied.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

BARRY R. Mc BEE
First Assistant Attorney General

JAY KIMBROUGH
Deputy Attorney General for
Criminal Justice

GENA BUNN
Assistant Attorney General
Chief, Postconviction Litigation Division

*Lead Counsel

M. Irene Delgadillo
*M. IRENE DELGADILLO
Assistant Attorney General
State Bar No. 24031568

P. O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 936-1400
(512) 936-1280 (FAX)

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I, M. Irene Delgadillo, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing Respondent Cockrell's Answer With Brief in Support has been served by placing it in the United States Mail, postage prepaid, on this the 15th day of April, 2003, addressed to: Paul Allen Larson, TDCJ-ID No. 452522, Eastham Unit, P.O. Box 16, Lovelady, Texas 75851-0016.

M. Irene Delgadillo
M. IRENE DELGADILLO
Assistant Attorney General

EXHIBIT A

NAME: LARSON, PAUL ALLAN APPL: STATUS: A RD & L1 I #OFF: 03
OLD TDC#: 00000000 CNTY CONV: 101 65TH
OFF-REC: 1119 PRJ RL: 05-20-2009 REC: 05-27-1987 MAX-TERM: 60Y 0M 0D
PEN-REC: 022.021 MAX-EX: 05-08-2046 BEGIN: 05-08-1986 PAR-ELIG: 05-08-2006
DEFADJ: INMATE TYPE: ID

OFFCD: 36140000 INDECENCY WITH CHILD 65TH
PENAL:021.110 MS:Y PLEA:G CAUSE:449009 CNT: OFF:02-02-1986
CC CNTY OFF:101 CNTY/CRT:101 263 MAX TERM: 20Y 0M 0D BEG:05-08-1986
MIN EXP:10-11-2002 MAX:05-08-2006 PAR ELIG:01-01-0001 SENTENCED:05-11-1987
OFF TDCNO: 00452522 PC SUBSEC: UNK CTO DATE 01-01-0001
OFFCD: 11190000 AGG SEX ASLT OF CHILD AGG FLAT-ONLY 65TH
PENAL:022.021 MS:Y PLEA:G CAUSE:449008 CNT: OFF:02-02-1986
CC CNTY OFF:101 CNTY/CRT:101 263 MAX TERM: 60Y 0M 0D BEG:05-08-1986
MIN EXP:05-20-2009 MAX:05-08-2046 PAR ELIG:05-08-2006 SENTENCED:05-11-1987
OFF TDCNO: 00452522 CTO DATE 01-01-0001
OFFCD: 11190000 AGG SEX ASLT OF CHILD AGG FLAT-ONLY 65TH
PENAL:022.021 MS:Y PLEA:G CAUSE:465007 CNT: OFF:07-01-1984
CC CNTY OFF:101 CNTY/CRT:101 263 MAX TERM: 60Y 0M 0D BEG:05-08-1986
MIN EXP:05-20-2009 MAX:05-08-2046 PAR ELIG:05-08-2006 SENTENCED:05-11-1987
OFF TDCNO: 00452522 CTO DATE 01-01-0001

PF7:UP, PF8:DOWN, PF2:TOP OF LIST, OR NEXT REQUEST/TDC _____ OR SID _____
END OF OFFENSES; ALL OFFENSES HAVE BEEN DISPLAYED

TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION
COMMITMENT INQUIRY INFORMATION

The Director does not have a copy of the judgment and sentence documenting Larson's conviction in cause number 465007. However, the Director has obtained the Texas Department of Criminal Justice, Institutional Division computer generated commitment inquiry and provides the following:

- a) "OFFCD: 11190000" - identifies the National Crime Information Center offense code for the felony offense of aggravated sexual assault of a child.
- b) "PENAL: 022.021" - identifies the Texas Penal code violation for aggravated sexual assault of a child.
- c) "MS: Y" - indicates Larson is eligible for mandatory supervision release.
- d) The term "PLEA: G" reflects Larson pleaded guilty.
- e) "CAUSE: 465007" - reflects the Criminal District Court cause number for Larson's case.
- f) "CNTY OFF: 101" - identifies the offense in this conviction occurred in Harris County, Texas, with 101 being the TDCJ-ID numeric designator for Harris County.
- g) "CNTY/CRT:101 263" - identifies the county where the conviction occurred as Harris County, Texas and the convicting judicial district court for this case as the 263rd Judicial District Court.
- h) "MAX TERM: 60Y" - reflects a sixty year sentence.
- i) "SENTENCED: _____" - reflects a _____ sentencing date.

EXHIBIT B

AFFIDAVIT

STATE OF TEXAS

§
§
§

COUNTY OF WALKER

My name is Susan L. Schumacher. I am over twenty-one years of age, of sound mind, capable of making this Affidavit and personally acquainted with the facts herein stated.

I am employed as the Assistant Administrator of Offender Grievance at the Central Grievance Office for the Texas Department of Criminal Justice and my office is located in Huntsville, Texas. I do hereby certify that I am the custodian of Offender Grievance Records. I have reviewed the grievance records on Offender **Paul Larson** TDCJ #452522, Cause Number 9:03CV59, and hereby certify that the attached documents requested for the time period of October 2002 to the present relating to **disciplinary case #20030044031**, are true and correct copies of the grievance records now on file. I further certify that the records attached hereto are maintained in the usual and regular course of business at the Office of Offender Grievance for the Texas Department of Criminal Justice.

In witness whereof, I have hereto set my hand on this the 2nd day of April 2003.

Susan L. Schumacher

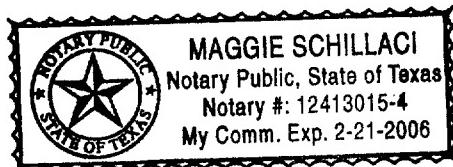
Susan L. Schumacher
Assistant Administrator Offender Grievance
Texas Department of Criminal Justice

Before me, the undersigned authority Maggie A. Schillaci on this day personally appeared Susan L. Schumacher, known to me to be the person whose name is subscribed to the foregoing instrument, and having been by me duly sworn on oath, acknowledged that she had executed the same for the purpose and consideration therein expressed and that the foregoing statements are true and correct.

Given my hand and seal of office on this the 2nd day of April 2003.

Maggie A. Schillaci

NOTARY PUBLIC in and for
The State of Texas



CARTW
5

INITIAL PRE-HEARING REPORT AND HEAR. REQUEST

DOC# 00452522 ACCOUNT #0452522 NAME: LARSON, PAUL ALLAN
 DATE: 10-15-02 TIME: 05:10 AM: PRE-HEARING DETENTION
 GRADE: SG2 GENDER: M32 PRIMARY LANGUAGE: ENGLISH MR/MRS/MS/DR/MISS/NO
 LOCATION: MA / TEN. CRIME DATE: 10/11/02 12:30 PM LOCATION EA 02 DORM
 TYPE: ID

OFFENSE DESCRIPTION

ON THE DATE AND TIME LISTED ABOVE, AND AT 2 DORM, OFFENDER: LARSON, PAUL ALLAN, DOC#-ID NO. 00452522, WAS ORDERED BY SGT. MORGAN TO PACK HIS PROPERTY AND GO TO THE NORTH GYM AND SAID OFFENDER FAILED TO OBEY THE ORDER. FURTHERMORE, OFFENDER LARSON DID FAIL TO OBEY A DIRECT ORDER WHICH RESULTED IN A SIGNIFICANT DISRUPTION OF OPERATIONS IN THAT SUCH ACT CAUSED A DELAY IN SHAKING DOWN TWO DORM.

INTERVIEWER: SGT. MORGAN, M. SGT.

WITNESS SIGNATURE: 1 *

OFFENDER NOTIFICATION IF APPLICABLE INTERPRETER:

TIME & DATE NOTIFIED: 10-15-02 12:00 PM BY: PRINTED Bell
 DATE WILL APPEAR BEFORE A HEARING OFFICER 24 HOURS ON NOTICE AFTER RECEIPT OF THIS
 NOTIFICATION. DO YOU WANT TO ATTEND THE HEARING? YES NO IF NO, HOW DO YOU
 PREFER NOTIFICATION: NOT GUARDED

OFFENDER NOTIFICATION SIGNATURE: I read & sign DATE: 10-15-02
 BY SIGNING BELOW, YOU GIVE UP YOUR RIGHT TO 24 HOUR NOTICE AND AUTHORIZE THE
 HEARING OFFICER TO PROCEED WITH THE HEARING.

OFFENDER WAIVER SIGNATURE: _____ DATE: _____

HEARING INFORMATION

HEARING DATE: 10/18/02 TIME: 10:00 AM PAPER 3576 SIDE# B PAGE# 129 END# 258
 CURRENT SUSPENSION AT HEARING: PAPER# SIDE# START# END#
 EXPLANATION BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF
 HEARING, (2) IF ACCUSED OFFENDER WAS CONFINED IN PRE-HEARING DETENTION MORE THAN
 24 HOURS PRIOR TO HEARING, (3) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE
 OFFENDER STATE, (4) IF ANY WITNESSES OR (5) DOCUMENTATION WAS EXCLUDED FROM
 HEARING, (6) IF OFFENDER WAS DENIED CONFRONTATION AND/OR JURISDICTION EXAMINATION OF A
 WITNESS AT THE HEARING (7) IF HEARING WAS NOT HELD WITHIN SEVEN DAYS, EXCLUDING
 WEEKENDS AND HOLIDAYS, FROM THE OFFENSE DATE AND, (8) IF INTERPRETER USED:
 SIGNATURE: _____

ACCUSATION: 10/16/02

OFFENDER CODE#: 124-0	123-0	
OFFENDER PLA# (G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z)	NG	NG
EXCLUDED: (1, 2, 3, 4, 5)	6	6
REQUIRED TO MEMORIZE PRIOR TO DECISION: (1) COURTDATE (2) HEARINGDATE BY: INITIALS		
IF GUARDED, EVIDENCE PRESENTED, CONSIDERED, AND REASON(S) FOR DETERMINATION OF WHETHER ADMISSION OF FULL OFFICER'S REPORT, COMMISSIONED MONEY, OTHER EXPLANATION OR ALL OFFICER'S REPORT: <u>Officer Report before statement of Admision</u>		

RESTRUCTURED

LOSS OF PRIV(DAYS)	REPRIMAND	SOLITARY(DAYS)
*RECREATION(DAYS)	EXTRA DUTY(HOURS)	REMAIN LINE 3
EMCOMMISSARY(DAYS)	CONT.VIGIT SUSP THRU	REDUC.CLASS. FROM 53 TO 11
PROPERTY(DAYS)	CELL RESTRIKTS	GOOD TIME LOST(DAYS)
(DAYS)	SPECIAL CONFINEMENT	DAMAGES/FORFEIT.\$

NOTICE: FACTUAL REASNING(S) FOR PARTICULAR PUNISHMENT IMPOSED:

Failure to obey orders and not be threatening

NUMBER FOR PRE-HEARING DETENTION TIME: YEAR/DAYS: NO / NA
 DATE PLACED IN PRE-HEARING DETENTION: 10/15/02 HEARING LENGTH: 30 MINUTES
 SIGNATURE FOR RELEASE OF OFFENDER: Jan Pesthants

PRINTED OFFENDER PRINTED WARDEN STATE CLASS, COMMITTEE MEMBER
 FORM 1-62/MAY/1997 COUNSEL SUBSTITUE IF YOU DO NOT UNDERSTAND THIS FORM
 CALL OR WRITE COMMISIONER OF CORRECTION, 1000 BROAD ST, BOSTON, MA 02110 OR NO FEE FOR USE OF FORM

Informal Resolution App?
Officer Y <input checked="" type="checkbox"/>
Supervisor Y <input checked="" type="checkbox"/>

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

OFFENSE REPORT

PHD

Case No. 2003D044
MHMR Rest? Y N
PHD Y N

(1) TDCJ-No. 452522 (2) Offender Larson, Paul (3) Unit Ea(4) Housing Assign: D-1-5 (5) Job Assignment: N/A(6) Offense Level, Code Title: 2.23 Creating a disturbance
2.24 Refusing to obey ordersOFFENSE DESCRIPTION: On 10/11/02 at 12:30 AM/PM, and at 2 down
(7) Date (8) Time (9) Enter Specific LocationOffender Larson, Paul TDCJ No. 452522

was ordered by Sgt Morgan to pack his property and go to the north gym and said offender failed to obey this order furthermore offender Larson did fail to obey a direct order which resulted in a significant operation in that such act caused a delay in taking down two down.

(10) Additional Information: On date and time listed above offender failed to move his property to the gym for a lockdown.

~~RESTRICTED~~~~AND~~~~CONFIDENTIAL~~

(Continue on additional sheet if necessary)

(11) Witnesses:

(12) Accusing Officer/Employee: Printed Name/Rank M Morgan Sgt(13) Signature: M Morgan (14) Shift/Card P4 (15) Date 10/11/02 (16) Time 100(17) Approving Supervisor's Printed Name: Sgt R. H. Brown (18) Date 10-11-02(19) Grading Official (Print) JEA (20) Rank 2F (21) Date 10-11-02(22) Grade: (Circle One) IR UP MI MA (23) Justification to override Informal Resolution: OCT 12 2002

PRELIMINARY INVESTIGATION REPORT

This report is to be completed on each Offense Report for review by the grading official. The purpose of this report is to obtain any other pertinent information about the incident prior to grading the Offense Report. The Preliminary investigation should not be completed by the charging officer or a person involved in the incident.

Offender: LARSEN, PAUL TDCJ No. 45 2522

Date & Time Investigation started: 10-11-02 @ 1330

1. ELEMENTS OF CHARGE. Does the offense description support the elements of each charge (the things that had to be done in order to commit an offense). If "No," have charging officer add needed information.

Offense Code 2.23: Yes No Offense Code _____: Yes No
 Offense Code 2.24: Yes No Offense Code _____: Yes No

2. ADDITIONAL INFORMATION. Has the charging officer included supporting information or evidence to supplement the standardized pleading such as items listed below? (Write "Yes," "No," or "NA" [not applicable] by each item).

- N a. listing other witnesses to the incident,
N b. documentary evidence, e.g., photographs of contraband, etc.
Y c. additional information about the offense.

3. ACCUSED OFFENDER states that: (Print interpreter's name if applicable):

NOT A TRUTH

4. ACCUSING OFFICER states that: report is true & correct as written

5. WITNESS STATEMENTS (List employee or offender; attach statements to report):

None

6. DOCUMENTATION. Documents reviewed (lay-ins, appointments, medical records, etc.)
 Lay-ins, Roster, Medical Records, Picture, Other (List & attach to report)

None

Name of Investigating Officer (Print) R. N. Brown

Rank Sgt

Date & Time Investigation Completed 10-11-02 @ 1400

7. INFORMAL RESOLUTION was not appropriate or not possible because:

Jungo Approving Supervisor's Printed Name L+ Rank Date 10/11/02

DISPENSE: 20030044031; DULL # 00458684, NAME: LEPOUR, PAUL ALLAN
 CURRENT UNIT: EA, BOUNDARY: 06 , CLASS: 83, -DISABILITY: 82, TYPE:
 DEFENSE DATE: 101103, TIME: 12 : 30 PM, LOCATION: EA
 CHARGING OFFICER: MURRAY, M. NOT.
 DEFENSE CODES: A) 23 . 0, B) 24 . 0,
 DESCRIPTIONS: A) NG, B) NG,
 PLEA: A) NG, B)
 CLARK RWD: 10/1002 SERVICE LAPSE DATE: 111003
 IS ASSIGNED: Bell SERVICE DATE: 10-15-03
 SERVICE TIME: 1200

COUNSEL SUBSTITUTE HAS BEEN APPOINTED BECAUSE:

- A. ACCUSED IN ANY FORM OF DISRESPECTFULNESS OR DISRESPECTFUL LANGUAGE
- B. WAS BELOW 5.0 TO BELOW 7.0
- C. LITERACY IS QUESTIONABLE
- D. ACCUSED HAS DIFFICULTY UNDERSTANDING ENGLISH
- E. ACCUSED HAS REQUESTED COUNSEL SUBSTITUTE
- F. ACCUSED HAS REQUESTED WITNESS WHO CAN NOT ATTEND THE HEARING
- G. COMPLEXITY OF CASE WARRANTS COUNSEL SUBSTITUTE
- H. ATTUDER'S REPORT CLEARLY DESCRIBES THE INCIDENT IN QUESTION: YES NO
- I. CHARGES LISTED WERE REVIEWED WITH REFERENCE TO ADIC DISCIPLINARY RULES AND PROCEDURES: YES NO
- J. OFFENCE DESCRIPTION IN REPORT SUBSTANTIATES EACH OF THE ALLEGED OFFENSES IDENTIFIED: YES NO

If (J), EXPLAIN:

- 1. THE ACCUSED WAS INFORMED OF THE FOLLOWING RIGHTS:
- A. TO CALL AND QUESTION WITNESSES YES
- B. TO PRESENT DOCUMENTARY EVIDENCE
- C. TO BE REPRESENTED BY COUNSEL SUBSTITUTE
- D. TO CALL AND QUESTION THE CHARGING OFFICER AT THE HEARING
- E. THE ACCUSED STATES HE/SHE UNDERSTANDS REPORT, CHARGES AND RIGHTS
- F. THE ACCUSED STATES HE/SHE WISHES TO ATTEND HIS/HER HEARING

2. THE ACCUSED REASONS AND/OR DEFENSE: my staff were packed
I told them I had a bad back & had rest.
I could not carry.

3. REQUESTED WITNESSES: NA

3. REQUESTED DOCUMENTARY EVIDENCE: NA

AND

CONFIDENTIAL

REVISED 04/03

CSHS1802

T.D.C.J. - INSTITUTIONAL DIVISION
 HEALTH SUMMARY FOR CLASSIFICATION SYSTEM
 INQUIRY

DATE: 10/15/02
 TIME: 13:34:21

TDCJ-ID #: 00452522 SID #: 03869248

NAME: LARSON, PAUL ALLAN

HT 5'08" WT 190

DOB: 06 24 1941

UNIT: EA HOUSING: D-1-Q5

JOB: PRE-HEARING DETENTION

P	U	L	H	E	S
1	3	1	3	1	1
1	C	A	C	A	B
1	P	I	P	I	H
1	P	I	P	I	H

RESTRICTIONS

UNIT: NO RESTRICTION

HOUSING: NO RESTRICTION

BUNK: LOWER ONLY

WORK: W03 W07 W09 W10 W12

DISCIPLINARY PROCESS: NO RESTRICTION

TRUSTY CAMP SUITABLE: Y

ROW: GROUND FLOOR ONLY

INDIVIDUALIZED TREATMENT PLAN:

TRANSPORTATION RESTRICTIONS: NO RESTRICTION

REVISED BY: CHERIAN

REVISED DATE: 02 06 2002

PF1 -HELP PF3 -MENU PF4 -ADDITIONAL INFO PF7 -UP PF8 -DOWN

ENTER NEXT REQUEST:/TDCNO: OR SIDNO:

RESTRICTED**AND****CONFIDENTIAL**

CSHS1802

T.D.C.J. - INSTITUTIONAL DIVISION

DATE: 10/15/02

PAGE NO: 01

HEALTH SUMMARY FOR CLASSIFICATION SYSTEM

TIME: 13:34:24

SUMMARY OF TRANSACTIONS

INMATE NAME: LARSON, PAUL ALLAN

TDCJ-ID #: 00452522

DATE	RESTRICTION	AUTHORITY
02-06-2002	LOWER ONLY	CHERIAN
	GROUND FLOOR ONLY	
	SEDENTARY WORK ONLY	
	LIMITED STANDING	
	NO LIFTING > 020 POUNDS	
	NO BENDING AT WAIST	
	NO CLIMBING	
06-15-2001	LOWER ONLY	WANG
	GROUND FLOOR ONLY	
	LIMITED STANDING	
	NO LIFTING > 020 POUNDS	
	NO BENDING AT WAIST	
	NO CLIMBING	
02-02-2001	LOWER ONLY	B. SLOAN RP

PF1 -HELP PF3 -RETURN TO INQUIRY PF7 -UP PF8 -DOWN PF10 -PRINT
 ENTER NEXT REQUEST/OR TDCNO: OR SIDNO:

Disciplinary Worksheet and Documentation Checklist

*This Form must be used in combination with the Grievance Worksheet (OG-01)*Offender Name: Larson, PaulTDCJ #: 452522Grievance #: 2003040907Disciplinary Case #: 20030441031 I-47 MA
 I-47 MI I-210 (Front and back)
 I-217 CS 09
 CS 10-11 A and B
 CS 12 Outpatient Mental Health Services
Disciplinary Case Review (if applicable)
 CS 14 (if applicable)Inmate Plea: Guilty Not Guilty NoneWas the disciplinary tape reviewed? Yes No Disciplinary Tape # _____Did the Offender receive 24-hour notice of the hearing? Yes No N/A Did the Offender waive the 24-hour notice? Yes NoWas the hearing held within 20 days of notification? Yes No N/AWas an Interpreter requested/required at the hearing? Yes No N/A Was the Interpreter present at the hearing? Yes NoWas the Offender present at the hearing? Yes No N/ADid the Offender make a statement at the hearing? Yes No N/AWas the punishment consistent with the guidelines in the Disciplinary Rules & Procedure for Offenders? Yes No N/AWas the accusing officer present at the hearing? Yes No N/AWere witnesses requested? Yes No N/AWere witnesses present? Yes No N/AWas the Offender allowed to submit evidence at the hearing? Yes No N/AIf so, did the evidence refute the charge? Yes No N/AWas sufficient evidence presented? Yes No N/AWitness statements, Lab Reports (drug related cases) Medical Records (if appropriate) Yes No N/ADid either staff or offender witness testimony contradict charges? Yes No N/A

Notes: Offenders are allowed to either have other offenders assist them in carrying property or make additional trips to carry property to shack down area. Per Capt Pace.

Completed By:

Signature: T. E. ColaPrinted Name: T. E. Cola

Title: _____

LAW OFFICES OF
KIRKLAND & ELLIS LLP

FBI U.S.A.

2002/10/08
08:37:12

HEARING WORK SHEET

NUMBER: 00080044031, JDCJ # 00450322, NAME: LARSON, PAUL ALLAN
 CURRENT UNIT: EA, HOUSING: D-1 05, CLASS: B3, GUEST: 02, TYPE: P
 HEARING DATE: 10/19/02, TIME: 1:12 : 30 PM, LOCATION: EA
 DEFENDER ATTORNEY: MURKIN, M. SWI.
 DEFENSE CODES: A) 23 . C, B) 24 . C, C)
 DESCRIPTORS: A) 18, B) 26, C)
 PLEA: A) N, B) N, C)
 BOND: A) 0, B) 0, C)
 HEARING LAPS DATE: 11-1-02, BOND: HR, DIS: 301, SERVICE DATE: 10-19-02
 HEARING DATE/TIME: 10-18-02, 10:40 AM, SERVICE TIME: 1:12 PM
 ACCUSED OFFENDER'S DEFENSE: See CS 10.11a #2

SUSPENSE: n/a

EVIDENCE: n/a

B. CHARGING OFFICER'S STATEMENT: ③ Larson told me to go to his property
to get his property

C. ACCUSED OFFENDER'S STATEMENT AT HEARING: ① I have no history of

D. HEARING NOTES: ② I am wit A Johnson, Dennis
he has a medical condition
he cannot carry his property
unless reason or need before
he don't get them.

④ I feel I am not responsible for my property

INTERPRETER USED: n/a DOCUMENTARY EVIDENCE: n/a

WITNESSES PRESENT OR TESTIMONY (CS-09) ENTERED: See c#2

ACKNOWLEDGE MODIFICATION: n/a OBJECTIONS: n/a

SUMMATION/MITIGATION: Reason
will class is
over 29 yrs of good
time.

PHD credit
early

RESTRICTED

PRESENTATION CONCLUDED: LARSON, PAUL ALLAN

WOULD YOU LIKE TO SAY ANYTHING ELSE? YES NO **AND**

CS INFORMATION CONFIDENTIAL YES NO N/A

YES NO N/A

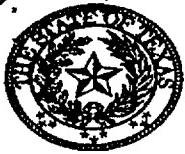
DISCIPLINE/PUNISHMENT: NON-FRIVOLOUS EVIDENCE: SANCTIONS ASSESSED: CROSS EXAMINATIONS: LOSS OF CLASS: REPRMANDE: CREDIT (PMH): RECREATION: EXTRA DUTY: SOLITARY: COMMISSARY: CONT. VISIT THRU: REMAIN: PROPERTY: CELL REST: REDUC CLASS FROM: 33 TO 47SPECIAL CELL: GOOD TIME LOSS: DISCIPLINE/PUNISHMENT: DAMAGES: DISCIPLINE/PUNISHMENT:

REVISED: 04/19/03

DISCIPLINE/PUNISHMENT:

DISCIPLINE/PUNISHMENT: <

Div.



Texas Department of Criminal Justice

STEP 1

PASO 1

OFFENDER GRIEVANCE FORM

Forma Para Quejas de los Preso

Offender Name: Paul Larson TDCJ # 452522Unit: Eastham Housing Assignment: Dorm 2, 50 bunkUnit where incident occurred: Eastham

OFFICE USE ONLY

Para Uso De La Oficina Solamente

Grievance #: 2003040907Date Received: NOV 04 2002Date Due: 12-14-02Grievance Code: 423Investigator Number: ZD66

EM UOF MEI
 ADA REL SSI

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.

Who did you talk to (name, title)? N/A; Appeal from case #: 2003004403 When? _____

What was their response? EXMM Case #: 20030044031

What action was taken? _____

State your grievance in the space provided. Please state who, what, when, where and disciplinary case number if appropriate.

On 10/18/02, I went to a disciplinary hearing, in handcuffs from PHD, for case given to me for an incident which happened 10/11/02. The hearing was held on my 8th day in PHD. There was no investigation of the case, nor did have a chance to tell Lt. Handley my version of what occurred on 2 dorm before he ordered my commitment to PHD. It was the 5th day in PHD before the counsel substitute came to serve the case; however, before she could even get the case served, she went to speak to Offender Kelley about his fight with Offender Walker. When she came back, she didn't ask me if I had any witnesses, nor did she seem to have time to discuss the charges. She did not talk to any of my 2-dorm witnesses nor the other Officer on 2-dorm at the time I was escorted off 2-dorm in handcuffs (I had informed her of names and reasons for calling witnesses by I60). As I was in PHD the entire time from when I was taken from 2-dorm till I went to the hearing, 8 days later, I was not able to contact any witnesses. After the hearing, I sent an I60 to the counsel substitute to review the tape; however, on this the last day that my appeal is due, I never had the opportunity to review the tape. I plead not guilty as: (1) I had already packed all my property before I tried to talk to Sgt Morgan; (2) I never refused a direct order to take my property to the Gym; instead, I tried to show Sgt Morgan my medical reasons why I would be unable to carry my property to the Gym; and (3) I was pretty sure that there had been no disruption of operations based on Sgt Morgan and I having to ask offenders to move over to let us off 2-dorm. After I got out of PHD, this was confirmed by offenders who told me that the entire inventory/shakedown took less than 3 hours for the whole dorm. In fact, some offenders were coming in from the Gym before my property had been removed from 2-dorm. I was already punished, with loss of personal property and loss of all my craft.



Texas Department of Criminal Justice

STEP 1

PASO 1

**OFFENDER
GRIEVANCE FORM**

Forma Para Quejas de los Preso

Offender Name: Paul Larson TDCJ # 452522
 Unit: Eastham Housing Assignment: Dorm 2, 50 bunk
 Unit where incident occurred: Eastham (Appeal continued)

OFFICE USE ONLY		
Para Uso De La Oficina Solamente		
Grievance #:		
Date Received:		
Date Due:		
Grievance Code:		
Investigator Number:		
<input type="checkbox"/> EM	<input type="checkbox"/> UOF	<input type="checkbox"/> MED
<input type="checkbox"/> ADA	<input type="checkbox"/> REL	<input type="checkbox"/> SSI

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.

Who did you talk to (name, title)? PAGE 2 OF APPEAL

When?

What was their response? CASE #: 20030044031

What action was taken?

State your grievance in the space provided. Please state who, what, when, where and disciplinary case number if appropriate.
 (Appeal continued)

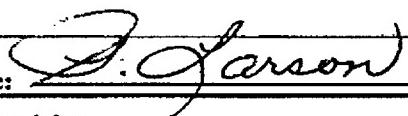
material (I'd been waiting to get into the craft shop for 10 months before the incident) during the shakedown. Also, I lost several dollars worth of food and items like my most recent (7-years old) picture of my daughter. As I have a liberty interest in my mandatory supervision date, the punishment assessed by Capt. Kitchens was equivalent to, no less than, misdemeanor punishment from a district trial court. Finally, my substitute counsel recommended a finding of guilty even though she should have known there was not enough evidence to show that I was guilty of either offense; and, she made this recommendation without consulting me after I plead not guilty. Due to my medical records, available to all parties involved in my lockup and what arose out of the incident, it should be quite plain that giving someone in my medical condition the choice of abandoning legal materials, risking the kind of injury that occurred to offender Gary Roger on 10/9/02, or refusing to try to carry legal property to a Gym can only be motivated by retaliation against people with medical conditions and/or retaliation against persons who have adequate legal material to litigate for their release; and, defies the U.S. Supreme Court's ruling in cases like Yeskey and Crawford-El.

SUBMITTED BY INMATE

Action Requested to Resolve your Complaint.

Expunge this case from my records. And, if possible, promulgate some kind policy so people with medical problems and/or legal materials no longer have to decide whether to risk their health or to forego their access to courts

Offender Signature:



Date: 11/02/02

Administration's Decision

- Mandatory referral to IAD (Grievance worksheet attached)
- No action warranted (Explain).

Signature Authority:

Date:

If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the Step 1 response. State your reason for appeal on the Step 2 form.

Returned because:

- 1. Grievable time period has expired.
- 2. Submission in excess of 1 every 7 days*
- 3. Original not submitted*
- 4. Inappropriate/excessive attachments*
- 5. No documented attempt at informal resolution.*

*You may resubmit this issue once corrections are made.

I-127 Back (9/1/1999)

- 6. No requested relief is stated.*
- 7. Malicious use of vulgar, indecent, or physically threatening language directed at an individual.
- 8. The issue presented is not grievable.
- 9. No remedy exists.
- 10. Illegible/Incomprehensible*
- 11. Inappropriate (request is for employee disciplinary action or consequential or punitive damages).

UGI: _____

Action Requested to Resolve your Complaint.

Offender Signature: _____ Date: _____

Administration's Decision

- Mandatory referral to IAD (Grievance worksheet attached)
 No action warranted (Explain).

Disciplinary case # 20030044031 has been reviewed. It appears that sufficient evidence was presented to support the finding of guilt and penalty imposed. no significant due process or apparent procedural errors have been noted, the case shall stand.

Signature Authority:

Warden Wakefield

Date: NOV 12 2002

Randall
11/13/02
O.D.

If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the Step 1 response. State your reason for appeal on the Step 2 form.

Returned because:

1. Grievable time period has expired.
 2. Submission in excess of 1 every 7 days*
 3. Original not submitted*
 4. Inappropriate/excessive attachments*
 5. No documented attempt at informal resolution.*
6. No requested relief is stated.*
 7. Malicious use of vulgar, indecent, or physically threatening language directed at an individual.
 8. The issue presented is not grievable.
 9. No remedy exists.
 10. Illegible/Incomprehensible*
 11. Inappropriate (request is for employee disciplinary action or consequential or punitive damages).

*You may resubmit this issue once corrections are made.

I-127 Back (9/1/1999)

UGI: _____

11



Texas Department of Criminal Justice

STEP 2

PASO 2

OFFENDER GRIEVANCE FORM

Forma Para Quejas de los Preso

Offender Name: Paul LarsonTDCJ # 452522Unit: EasthamHousing Assignment: 2-50Unit where incident occurred: Same

OFFICE USE ONLY

Para Uso De La Oficina Solamente

Grievance #: 2603040907UGI Rec'd Date: NOV 27 2002HQ Rec'd Date: DEC 02 2002Date Due: 1/23/03Grievance Code: #23Investigator Number: TOR3

EM UOF ME

ADA REL SS

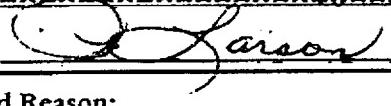
Give reason for appeal (Be specific). I am dissatisfied with the response at Step 1 because...

I know there were numerous due process and procedural errors present with the entire chain of events from noon 10/11/02 through the hearing of 10/18/02. The fact that I've written numerous I60s to the counsel substitute without being given access to the tape of the hearing, should be reason enough to suspect the Eastham personnel involved are trying to hide something. During the course of the hearing, I objected to the exclusion of all my witnesses who were on 2-duty at the time Sgt. Michael J. Morgan used uncalled for excessive force. My witnesses could testify to the fact: I was packed up before asking to speak to Sgt. Morgan; that there was no disruption of operations; and, finally, my witness could testify to the fact that when I approached Sgt. Morgan, I was holding health summary sheet (HSM-18) in my hand to show him why I could not carry property to the Gym. Another witness, I asked for, would have testified to what happened to Gary Rogers who had medical reasons not to carry his property to the Gym on 10/9/02. Witnesses can testify to the History of Sgt. Morgan's use of unnecessary excessive force. Due process was violated when: (1) Lt. Mark Hanley had me locked up in PHD, without asking my side of the story; (2) Lt. Todd E. Harris authorized my continued liberty restraint in PHD without proper investigation; (3) I was held in PHD from 10/11/02 until the evening after the hearing on 10/18/02; (4) my counsel substitute, Ms. Sonia D. Bell: (a) recommended that I be found guilty on the evidence, (b) failed to interview or contact the witnesses that I had asked for in two (2) I60s, (c) failed to arrange for me to hear the tape from the hearing (tape #3576, Side B, 129-258), and (d) did not offer any assistance on appeal (she would not even answer any of my I60s). Because this case has not been turned over on Step 1, and much of my property which should not have been taken, was taken (it was picked up by my friend Houston), the punishment assessed (which changed my mandatory supervision date from July 2007 to May 2009) was excessive for my unwillingness to choose whether to risk my physical well-being/health or jeopardize my access to courts.

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my personal and legal property be destroyed or attempt to carry it to the Gym. Due to this case, I've become familiar with Chapter 14 (Civil cases in State Courts); therefore, I know I have valid recourse to courts if this appeal does not result in overturning this case. Defendants would be: Tommy E. Goodin, Ms Martha R. Jackson, Warden Gary A. Wakefield, Warden David W. Sweetin, Captain Patrick N. Ross, Sr., and the other entities mentioned, herein. I'll gladly cite case law upon which a viable suit can be based, under the circumstances of this obvious case of retaliation against myself for either my physical handicap (ADA) and/or blatant retaliation due to my litigation (I can prove this was known to the Respondents). At this point, to keep the peace (and not face an further retaliation) I can live with the losses I've already sustained; but only if this case is expunged from my record, my class and good time is restored and I know there will be no further retaliation about my property or medical restrictions.

XXXXXXXXXXXXXXXXXXXXXX~~xxxxxx~~xxxxxx~~xxxxxx~~xxxxxx~~xxxxxx~~xxxxxx~~xxxxxx~~xxxxxx~~xxxxxx~~xxxxxx~~xxxxxx~~

Offender Signature: 

Date: 11/26/02

Appellate Decision and Reason:

- The Step 1 answer has addressed your complaint. No action will be taken.
- You have not provided a good reason for your appeal or for this office to review your claims further. No action will be taken.
- The issue you raise has been resolved or is pending resolution and no further action is warranted.
- The issues you present have already been reviewed. No further appeals of the same issues will be addressed. No action will be taken by this office.

Major case #20030044031 has been reviewed by this office. Sufficient evidence was provided to support the guilty verdict. There were no due process errors. There were no investigation or counsel substitute deficiencies. The punishment was within agency guidelines. The decision of the hearing officer shall stand as rendered.-jl-d

Signature Authority: Kelli Ward

Date: DEC 12 2002

Returned Because:

Kelli Ward

- 1. Grievable time period has expired.
- 2. Illegible/Incomprehensible*
- 3. Originals not submitted*
- 4. Inappropriate/Excessive attachments*
- 5. Malicious use of vulgar, indecent, or physically threatening language directed at an individual.
- 6. Inappropriate (request is for employee disciplinary action or consequential or punitive damages).

*You may resubmit this issue once corrections are made. Grievance Staff:

GRIEVANCE INVESTIGATION WORKSHEET

Restricted & Confidential

GRIEVANCE OFFICE USE ONLY

STEP 1
STEP 2

Unit: FA UGI/CGI: T.Goodr. Date Initiated: 11-4-02 Date Completed: 11-6-02
 Offender Name: Larsen Paul TDCJ #: 452522 Housing: 20m
 Grievance #: 2003040907 Code: 423 Date Due: 12-14-02

EMERGENCY	USE OF FORCE	DISCIPLINARY ISSUE	PROPERTY ()	ADA ()
() YES <input checked="" type="checkbox"/> NO	() MAJOR <input type="checkbox"/> MINOR <input type="checkbox"/> UR #	(X) MA <input type="checkbox"/> MI # 20030044031	RELIGION ()	SSI ()
		MEDICAL ()		

Summary of Issue: (Include date, time, location.) NOTE: For claims of Excessive/Unreported UOF, or Harassment/Retaliation for use of the Grievance Procedure or Access to Courts rights, other legal activities, the investigation must be conducted by Internal Affairs. Complete the Fact Sheet for I.A.D. Investigations.

Appealing major due case # 20030044031

Requested Remedy: Expunge this case from records.

The following is to be completed by the investigating official. The investigating official must sign the bottom.
(Attach Statements/Supporting Documentation if applicable.)

Summary of Fact Finding Activity:

Copy of disciplinary case # 20030044031 has been reviewed.

Cop Pace above offender may either have other offenders assault him carry their property or make additional trips to get property to shutdown area.

Suggested Response to Offender: Disciplinary case # 20030044031 has been reviewed. It appears that sufficient evidence was presented to support the finding of guilt and penalty imposed. As no significant due process or apparent procedural errors have been noted, the case shall stand.

OUTCOME CODE O (Grievance Office Use Only)

Completed By Signature T.Goodr. Date 11-6-02

Printed Name T.Goodr. Title Investigator

(Note: This grievance is being processed in an effort to resolve a problem through the established procedures identified in BP-03.77 and AD-03.82. It is expressly prohibited to subject the grieving offender, other offenders, or staff to any form of reprisal for the use of these procedures. The Internal Affairs Division will investigate all such claims.) OG-01 (Front) Rev. 11/99

GRIEVANCE INVESTIGATION WORKSHEET

Restricted & Confidential

STEP 2

GRIEVANCE OFFICE USE ONLY			STEP 2
Unit: CGO CGI: I0931 Offender Name: Larson, Paul Grievance No: 2003040907		Date Initiated: 12/10/02 TDCJ No: 452522 Code: 423	Date Completed: 12/10/02 Housing: EA Date Due: 01/01/03
EMERGENCY YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	USE OF FORCE MAJOR <input type="checkbox"/> MINOR <input type="checkbox"/> UR <input type="checkbox"/> UOF #	DISCIPLINARY ISSUE MAJOR <input checked="" type="checkbox"/> MINOR <input type="checkbox"/> # 20030044031	PROPERTY <input type="checkbox"/> ADA <input type="checkbox"/> RELIGION <input type="checkbox"/> SSI <input type="checkbox"/> MEDICAL <input type="checkbox"/>

Summary of Issue: (Include date, time location.) NOTE: For claims of Excessive/Unreported UOF, or Harassment/Retaliation for use of the Grievance Procedure or Access to Courts rights, other legal activities, the investigation must be conducted by Internal Affairs. Complete the Fact Sheet for I.A.D. Investigations.

Code 24.0, Refusing To Obey Orders and Code 23.0, Creating A Disturbance. Reduction in class from S3 to L1; 30 days loss of good time; and 30 days commissary restriction.

Offender claims there was no investigation conducted and the counsel substitute waited until the 5th days after he was placed in PHD to serve him the case. He further stated she did not interview his requested witnesses.

Requested Remedy:

Overturn case.

The following is to be completed by the investigating official. The investigating official must sign the bottom.
(Attached Statement/Supporting Documentation is applicable.)

Summary of Fact Finding Activity:

1. The evidence used for a finding of guilt was the officer's report, the charging officer testimony at the hearing supporting the charge, and the offender's admission of guilt.
2. The offense description satisfies the elements of the charge.
3. An investigation was completed and there is nothing to indicate that the counsel substitute violated policy. There is no indication that the offender requested witnesses at service. Offender Johnson did testify at his hearing.
4. The punishment is well within agency guidelines.
5. There are no due process errors noted.

Suggested Response to Offender:

Major case #20030044031 has been reviewed by this office. Sufficient evidence was provided to support the guilty verdict. There were no due process errors. There were no investigation or counsel substitute deficiencies. The punishment was within agency guidelines. The decision of the hearing officer shall stand as rendered.

Outcome Code:	D		
Completed By:	Signature: <i>Susan Nelson</i>	Date: 12/10/02	Title: CGI
	Printed Name: Susan Nelson		